

Congress of the United States
Washington, DC 20515

September 25, 2015

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

984

**RE: Preliminary Determination of Rate-of-Return Study Areas 100 Percent Overlapped
By Unsubsidized Competitors WC Docket No. 10-90**

Dear Chairman Wheeler:

We note that four of the companies preliminarily determined to have 100 percent overlap by an unsubsidized competitor or combination of competitors in the proceeding noted above are located in Oregon. Without commenting on the merits of the docket itself, with this correspondence we make known our concerns with the methodology used to make the determination and strongly urge the Federal Communications Commission (FCC) Wireline Competition Bureau to re-consider the determination and methodology.

Gervais Telephone Company, Mt Angel Telephone Company, St Paul Cooperative Telephone Association and Monitor Cooperative Telephone (referred to throughout as the Carriers) serve rural areas in Oregon. The FCC used data from Form 477 to determine that McMinnville Access and WaveDivision (referred to throughout as the competitors) have 100 percent or 99 percent coverage of the Carriers service areas and on that basis made the preliminary determination to eliminate all federal universal high-cost support from these areas.

As we understand the situation, the Carriers have filed comments with the FCC effectively refuting the determination by the FCC. Without re-stating all the Carriers comments to the FCC we do point out one aspect of the comments we find compelling: one of the competitors, McMinnville Access, has signed an affidavit explicitly stating they do not serve all the census blocks in the Carriers service territory and do not intend to make any attempt to do so. This points to the serious flaw in relying solely on the Form 477 data to determine that all federal universal high-cost support should be withheld from the Carriers service areas.

In addition to the foregoing, we also understand that each of the Carriers did a physical review of the census blocks in their service areas and could find no evidence of either cable facilities or fixed wireless antenna that would substantiate a complete, 100 percent or 99 percent overlap of all locations in all census blocks within their service areas by a facilities based competitor.

Withholding all federal universal high-cost support from rural Oregon would have serious negative impacts on the people living there. Access to modern telecommunications systems is essential to participating in today's economy, education and healthcare systems and, interaction with government agencies. This action should not be taken lightly or be done based on flawed data collection methods.

In summary, based on the information in this correspondence, the rest of the information contained in the Carriers comments to the FCC and our understanding of the situation, we feel the methodology used to determine that 100 percent or 99 percent overlap in the Carriers service areas is flawed.

With this correspondence we collectively request that the FCC remove Gervais Telephone Company, Mt Angel Telephone Company, St Paul Cooperative Telephone Association and Monitor Cooperative Telephone from the list set out in DA 15-868 as either 100 percent or 99 percent overlapped.

Thank you for your attention to this matter.

Sincerely,



RON WYDEN
U.S. Senator



JEFF MERKLEY
U.S. Senator



KURT SCHRADER
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 24, 2015

The Honorable Jeff Merkley
United States Senate
107 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your letter expressing concern about the methodology used to by the Wireline Completion Bureau (Bureau) to determine rate-of-return carrier study areas that are fully served by unsubsidized competitors and subject to the phase-out of high cost universal service support. Specifically, your letter expresses concerns about the reliability of FCC Form 477 data to make this preliminary determination. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

In the 2011 *USF/ICC Transformation Order*, the Commission adopted a rule to eliminate high-cost universal service support in incumbent local exchange carrier study areas where an unsubsidized competitor offers voice and broadband services that meet the Commission's service obligations throughout the study area. As my colleagues Commissioners Mignon Clyburn and Michael O'Reilly said recently, "Providing support to a carrier that is in essence using it to compete against an unsubsidized provider is not the best use of our scarce federal universal service dollars, as it distorts the market, fuels inefficiency, creates an un-level playing field, and is not the intent of universal service."

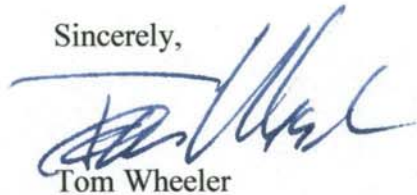
In December 2014, the Commission directed the Bureau to publish its preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment, which the Bureau did in July of this year. The Bureau made a preliminary determination finding 15 rate of return study areas to be 100 percent overlapped by an unsubsidized competitor and 11 study areas with an overlap of between 99 and 100 percent. The companies operating in the affected study areas – including the incumbent carriers, such as the four Oregon carriers noted in your letter, and the unsubsidized competitors – were invited to review and confirm or refute the results of our preliminary analysis. Rate-of-return carriers identified on the preliminary list are also free to submit evidence that an unsubsidized competitor does not offer service to all locations in the census blocks specified and/or that the competitor is not offering service to all locations within those blocks.

After thoroughly reviewing the comments received in response to the preliminary 100 percent overlap determination, including those submitted by your constituents, we will publish the final determination. Under the Commission's rules, the study areas on the final list will receive two-thirds of the frozen baseline amount in the first year and one-third of the frozen baseline amount in the second year prior to support being phased out.

With respect to your concerns regarding the data to make the preliminary determination of which unsubsidized providers offer voice and broadband service throughout a study area, the Bureau relied on the Form 477 broadband deployment in a study area over other sources, such as the State Broadband Initiative/ National Broadband Map (SBI/NBM) data, for several reasons. First, the Form 477 data collection is mandatory, and Form 477 filers must certify to the accuracy of their data. Second, Form 477 also requires providers to report the maximum advertised upload and download speeds they offer in a census block, which alleviates the need to use a pre-set speed tier as a proxy for that appropriate speed. Further, to be considered an unsubsidized competitors, providers must offer both fixed broadband and fixed voice service in a study area. Form 477 provides the best data available on whether broadband providers offer fixed voice service and ensures consistency in the data used to determine both broadband and voice competitors. Finally, while both SBI/NBM and Form 477 data historically could be used to analyze and broadband availability, only Form 477 data will be available going forward.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over the printed name.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 24, 2015

The Honorable Kurt Schrader
U.S. House of Representatives
108 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Schrader:

Thank you for your letter expressing concern about the methodology used to by the Wireline Completion Bureau (Bureau) to determine rate-of-return carrier study areas that are fully served by unsubsidized competitors and subject to the phase-out of high cost universal service support. Specifically, your letter expresses concerns about the reliability of FCC Form 477 data to make this preliminary determination. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

In the 2011 *USF/ICC Transformation Order*, the Commission adopted a rule to eliminate high-cost universal service support in incumbent local exchange carrier study areas where an unsubsidized competitor offers voice and broadband services that meet the Commission's service obligations throughout the study area. As my colleagues Commissioners Mignon Clyburn and Michael O'Reilly said recently, "Providing support to a carrier that is in essence using it to compete against an unsubsidized provider is not the best use of our scarce federal universal service dollars, as it distorts the market, fuels inefficiency, creates an un-level playing field, and is not the intent of universal service."

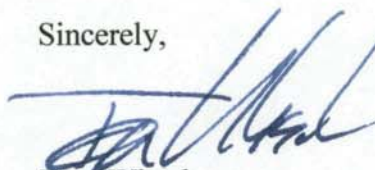
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After thoroughly reviewing the comments received in response to the preliminary 100 percent overlap determination, including those submitted by your constituents, we will publish the final determination. Under the Commission's rules, the study areas on the final list will receive two-thirds of the frozen baseline amount in the first year and one-third of the frozen baseline amount in the second year prior to support being phased out.

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Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 24, 2015

The Honorable Ron Wyden
United States Senate
223 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter expressing concern about the methodology used to by the Wireline Completion Bureau (Bureau) to determine rate-of-return carrier study areas that are fully served by unsubsidized competitors and subject to the phase-out of high cost universal service support. Specifically, your letter expresses concerns about the reliability of FCC Form 477 data to make this preliminary determination. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

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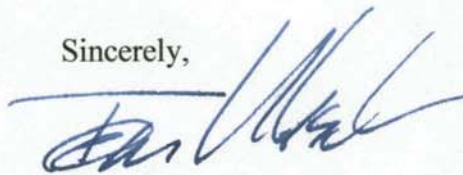
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Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending to the right.

Tom Wheeler